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Liquidating Trust*

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

In re:	:	Chapter 11
	:	
CIRCUIT CITY STORES, INC., <u>et al.</u> , <sup>1</sup>	:	Case No. 08-35653-KRH
	:	
Debtors.	:	(Jointly Administered)
	:	
	:	

**LIQUIDATING TRUST’S MOTION FOR ORDER APPROVING PAYMENT OF  
CLAIMS RELATED TO THE SHORT-TERM INCENTIVE PROGRAM**

The Circuit City Stores, Inc. Liquidating Trust (the “Trust”), through its Trustee, Alfred H. Siegel, hereby moves the Court (the “Motion”), pursuant to sections 105 and 363 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for the entry of an order approving the payments of claims related to a certain short-term performance-based incentive program (the “Short-Term Incentive Program”). As discussed further herein, the Trust believes that it may make the payments provided for herein pursuant to the terms of the confirmed Plan (as defined

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of their respective federal tax identifications numbers, are as follows: Circuit City Stores, Inc. (3875), Circuit City Stores West Coast, Inc. (0785), InterTAN, Inc. (0875), Ventoux International, Inc. (1838), Circuit City Purchasing Company, LLC (5170), CC Aviation, LLC (0841), CC Distribution Company of Virginia, Inc. (2821), Circuit City Properties, LLC (3353), Kinzer Technology, LLC (2157), Abbott Advertising Agency, Inc. (4659), Patapsco Designs, Inc. (6796), Sky Venture Corp. (0311), Prahs, Inc. (n/a), XSStuff, LLC (9263), Mayland MN, LLC (6116), Courchevel, LLC (n/a), Orbyx Electronics, LLC (3360), and Circuit City Stores PR, LLC (5512).

below). However, the Trust seeks this Court's approval and entry of a comfort order because the Debtors (as defined below) and the Trust have previously appeared before this Court objecting to claims filed pursuant to the Short-Term Incentive Program. In support of the Motion, the Trust respectfully represents as follows:

### **JURISDICTION**

1. This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue of these chapter 11 cases in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105 and 363 and Bankruptcy Rule 9019.

### **GENERAL CASE BACKGROUND**

3. On November 10, 2008 (the "Petition Date"), the above-captioned debtors (the "Debtors") filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code. The Debtors' wholly owned subsidiary, InterTAN Canada, Ltd. (which operated as The Source by Circuit City) and Tourmalet Corporation (a non-operating holding company) filed under the *Companies' Creditors Arrangement Act*.

4. On November 12, 2008, the Office of the United States Trustee for the Eastern District of Virginia appointed a statutory committee of unsecured creditors.

5. On January 16, 2009, the Court authorized the Debtors, among other things, to conduct going out of business sales at the Debtors' remaining stores pursuant to an agency agreement (the "Agency Agreement") between the Debtors and a joint venture, as agent

(the “Agent”). On January 17, 2009, the Agent commenced going out of business sales pursuant to the Agency Agreement at the Debtors’ stores. As of March 8, 2009, the going out of business sales at the Debtors’ remaining stores had been completed.

6. On September 10, 2010, the Court entered its Findings of Fact, Conclusions of Law and Order (the “Confirmation Order”) confirming Modified Second Amended Joint Plan of Liquidation of Circuit City Stores, Inc. and its Affiliated Debtors and Debtors in Possession and its Official Committee of Creditors Holding General Unsecured Claims (the “Plan”).

7. The Plan became effective on November 1, 2010, and pursuant to the Plan and Liquidating Trust Agreement approved therewith, the Trust assumed the right and responsibility to liquidate the Debtors’ remaining assets, analyze, investigate, and if appropriate, object to claims, and distribute the proceeds to satisfy the allowed claims of creditors.

8. Pursuant to the Liquidating Trust Agreement approved by the Confirmation Order, the Trust may, without Court approval, resolve/allow and pay the claims at issue in this Motion.

**RELIEF REQUESTED AND BASIS THEREFOR**

9. On August 21, 2009, the Debtors filed the *Debtors’ Thirty-Sixth Omnibus Objection to Claims (Disallowance of Certain Claims Relating to Short Term Incentive Plan)* (Docket No. 4600) (the “Thirty-Sixth Omnibus Objection”). In the Thirty-Sixth Omnibus Objection, the Debtors sought the disallowance of claims seeking payment of bonuses that were due under the Short-Term Incentive Program on the ground that claimants had not established

that they had met the company-wide and personal performance goals that were necessary conditions to receiving a bonus under the Short-Term Incentive Program. Thereafter, the Court entered orders in connection with the Debtors' Thirty-Sixth Omnibus Objection disallowing and expunging claims for bonuses under the Short-Term Incentive Program.

10. On October 21, 2009, the Debtors filed the *Debtors' Fifty-Sixth Omnibus Objection to Claims (Disallowance of Certain Alleged Administrative Expenses on Account of Employee Obligations)* (Docket No. 5320) (the "Fifty-Sixth Omnibus Objection"). In the Fifty-Sixth Omnibus Objection, the Debtors sought to disallow certain administrative claims filed relating to the Short-Term Incentive Program. Thereafter, on May 6, 2010, the Debtors filed the *Debtors' Seventy-Fourth Omnibus Objection to Claims (Reclassification of Certain Alleged Administrative Expenses on Account of Employee Obligations)* (Docket No. 7447) (the "Seventy-Fourth Omnibus Objection"). In the Seventy-Fourth Omnibus Objection, the Debtors sought to reclassify certain administrative claims filed relating to the Short-Term Incentive Program.

11. On March 25, 2010, this Court determined, among other things, that claims filed pursuant to the Short-Term Incentive Program were not entitled to administrative status. Thereafter, the Supplemental Fifty-Sixth Omnibus Objection Order and the Seventy-Fourth Omnibus Objection Order were entered in these cases (Docket Nos. 7081 and 7856, respectively) (By these two orders, the Court reclassified contingent claims for bonuses under the Short-Term Incentive Program from administrative priority to unsecured claims).

12. On March 22, 2011, in connection with a hearing on the objections related to the Short-Term Incentive Program, the Court concluded that if (a) an individual was employed

at Circuit City on May 15, 2009 and (b) he/she had established that he/she had met the personal criteria, then that claimant was entitled to a claim for the personal criteria portion of the Short-Term Incentive Program. The applicable priority for these qualified claims was not resolved.

13. On October 19, 2011, in connection with a further hearing on the objections related to the Short-Term Incentive Program, the Court held that the qualified claims were not entitled to administrative status, and continued for hearing until November 21, 2011 whether such claims should be classified as priority or general unsecured claims.

14. Following the October 19 hearing, the Trust further reviewed all administrative and priority claims filed relating to the Short-Term Incentive Program to (a) confirm which individuals were employed at Circuit City on May 15, 2009 and (b) determine which of these individuals also met the personal criteria (the “STIP Qualified Claimant”).

15. Given (a) the Court’s prior rulings and statements from the bench, and (b) the total amount at issue, the Trust believes, in the exercise of its business judgment, that it is prudent to allow all Short-Term Incentive Program claims filed by a STIP Qualified Claimant, up to the personal criteria portion of such claim . The priority amount shall be subject to the statutory cap of 11 U.S.C. § 507(a)(4) (the “STIP Priority Claims”) and anything over the statutory cap shall be allowed as a general unsecured claim (the “STIP GUCs”). The total amount of the STIP Priority Claims is approximately \$109,000. The total amount of the STIP GUCs is approximately \$259,000.00.

16. Accordingly, the Trust intends to allow and pay, at the appropriate time, the STIP Priority Claims and the STIP GUCs notwithstanding any order previously entered to the contrary.

**NOTICE**

17. Notice of this Motion is being provided to (i) parties-in-interest in accordance with the Case Management Orders and (ii) holders of the STIP Priority Claims and STIP GUCs. In light of the nature of the relief requested, the Trust respectfully submits that no further or other notice is necessary under the circumstances.

**NO PRIOR REQUEST**

18. No previous request for the relief sought herein has been made to this Court or any other court.

**CONCLUSION**

WHEREFORE, the Trust respectfully requests that the Court enter an order, substantially in the form annexed hereto as Exhibit A, authorizing the allowance of approving payment of the STIP Priority Claims and STIP GUCs in accordance with the Trust's established claims distribution process in implementing the Plan, and granting such other and further relief as may be just and proper.

Dated: November 7, 2011

TAVENNER & BERAN, P.L.C.

/s/ Paula S. Beran

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-and-

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CIRCUIT CITY STORES, INC., <u>et al.</u> , <sup>1</sup>	:	Case No. 08-35653-KRH
	:	
Debtors.	:	(Jointly Administered)
	:	
	:	

**ORDER APPROVING PAYMENT OF CLAIMS RELATED  
TO THE SHORT-TERM INCENTIVE PROGRAM**

Upon the Motion (the “Motion”)<sup>2</sup> of the Circuit City Stores, Inc. Liquidating Trust (the “Trust”) for an Order Approving Payment of Claims Related to the Short-Term Incentive Program; and the Court having reviewed the Motion; and the Court having determined that the relief requested in the Motion is in the best interests of the Trust, the beneficiaries thereof, and other parties in interest; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings and definitions ascribed to such terms in the Motion.



**ORDERED, ADJUDGED AND DECREED** that:

1. The Motion is GRANTED.
2. Notwithstanding any order to the contrary, the Trust may allow and pay the STIP Priority Claims and the STIP GUCs in accordance with the distribution process established by the Trust pursuant to its implementation of the Plan.
3. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation or interpretation of this Order.

Dated: \_\_\_\_\_  
Richmond, Virginia

\_\_\_\_\_  
The Honorable Kevin R. Huennekens  
United States Bankruptcy Judge

**WE ASK FOR THIS:**

\_\_\_\_\_  
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Counsel for the Circuit City Stores, Inc.  
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**CERTIFICATION**

I hereby certify that the foregoing proposed Order has been either served on or endorsed by all necessary parties.

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